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IN THE

Supreme Court of the United States

October Term, 1977.

No. 77-669.

AMELIA ZAMORA DE MATEOS, Administratrix of the Estate of THEODORE REYES, Deceased,

Petitioner,

v.

TEXACO, INC.

and

TEXACO PANAMA, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Texaco Panama, Inc. (Texpan), prays that the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit now before this Court must be denied.

OPINIONS OF THE COURTS BELOW.

The opinion of the United States District Court for the Eastern District of Pennsylvania and Order of that Court is printed in Appendix to Petition for Writ of Certio-

rari (A16 et seq.) and is reported at 417 F. Supp. 411 (E. D. Pa. 1976). The opinion of the United States Court of Appeals for the Third Circuit is also printed in Appendix to Petition for Writ of Certiorari (A1 et seq.) and is reported at 562 F. 2d 895 (3d Cir. 1977).

JURISDICTION.

Respondent does not question the jurisdiction as set forth in the Petition.

QUESTION PRESENTED.

Was the Court of Appeals for the Third Circuit correct in affirming the District Court's dismissal of this action on the basis of *forum non conveniens* where plaintiff was and still is a citizen and resident of Panama as was her decedent prior to his death; plaintiff had litigated this same action against the same defendant through the Panamanian Court system, including the Supreme Court of Justice of Panama, and was represented by counsel at every stage and full process was given both parties at each stage; the operative facts underlying the claim occurred, if at all, while the vessel, owned by a Panamanian company and flying the Liberian flag, was in transit between Puerto Cortes, Honduras and Puerto Limon, Costa Rica and where plaintiff's decedent had obtained employment in Panama and had signed an employment contract which had been approved by the Labor Ministry of Panama, which contract unequivocally called for the application of Panamanian law to all disputes arising from the employment status?

STATUTES INVOLVED.

This case involves the statutes set out in the Petition for Certiorari.

STATEMENT OF THE CASE.

Plaintiff, Amelia Zamora DeMateos, Administratrix of the Estate of her son, Theodore Reyes, a Panamanian seaman, appeals from an Order of the District Court dismissing her suit against Texaco Panama, Inc. (Texpan), a Panamanian corporation. Plaintiff brought her civil action in the United States District Court for the Eastern District of Pennsylvania on February 23, 1972 under the Jones Act, 46 U. S. C. §§ 688 et seq., The Death on the High Seas Act, 46 U. S. C. §§ 761 et seq., and The General Maritime Law. The district court dismissed her suit because the Eastern District of Pennsylvania is an inconvenient forum for the litigation. Reyes was a seaman aboard the S. S. TEXACO KENYA, owned by Texpan, on a voyage between Honduras and Costa Rica when on February 18, 1970 he became ill. When the vessel arrived in Costa Rica on February 23rd, Reyes was transferred to a hospital where he died the following morning. Plaintiff contends that the death of her son resulted from the failure of Texpan's agents in charge of its vessel to give him prompt and adequate medical attention. She alleges both negligence and unseaworthiness, consisting of lack of proper medical facilities. She also claims that the illness which resulted in her son's death was due to an unseaworthy condition on the vessel which permitted him to inhale toxic fumes. Defendant not only denied liability with respect to the merits of plaintiff's claims, but has maintained throughout this litigation that the predominance of contacts with Panama precludes the application of United States law to this action.

The procedural history of the case is set forth in the Opinion and Order of the trial court on pages A22-A23 of Petitioner's Appendix and in the Opinion of the Third Circuit Court of Appeals, pages A4-A5 of the Appendix. The action against Texaco, Inc. was dismissed with prej-

udice in July 1974 when counsel for defendant accepted service on behalf of Texpan, with the same force and effect as if a vessel of Texpan had been legally attached in the Port of Philadelphia.

Extensive discovery was conducted and at its conclusion the parties submitted the case to the trial court as a case stated, consisting of the completed discovery and submission by counsel of certain undisputed facts. The trial court was confronted with two issues: (1) to what extent should a judgment of the Supreme Court of Justice of Panama, which arises out of the same incident and involves the same parties, be determined as final and binding on the basis of the doctrine of comity between nations; (2) given the factual background of this matter, are there such sufficient contacts with the United States as to permit application of the maritime law of this country. In a thorough and well-reasoned opinion, the trial court concluded that American Maritime Law should not apply. It did not reach the first issue. The pertinent and controlling facts on which the trial court reached its decision as to the second issue are as follows.

Reyes was a citizen and resident of the Republic of Panama. From May, 1964, until his death in February, 1970, he was employed as a seaman by defendant Texpan, a Panamanian corporation which has a principal place of business in Panama City. At the time of his death, Reyes served aboard the S. S. TEXACO KENYA, owned by Texpan. The vessel was registered in Liberia and carried that nation's flag. When Reyes signed on as a crew member of the TEXACO KENYA in March, 1969, in Panama, he signed an employment contract agreeing to be bound by "Conditions of Employment" providing for the Application of Panamanian law to disputes arising out of Reyes' status as an employee. These conditions had been approved by the Labor Ministry of Panama for Panamanian seamen.

Texpan is a wholly-owned subsidiary of Texaco, Inc., a Delaware corporation, with its principal place of business in New York City. Texpan is a viable entity, separate and apart from its parent and engaged not only in the ownership of vessels such as the TEXACO KENYA, but also in the business of marketing petroleum products in Panama. The trial court concluded from the record before it that Texpan is a viable and separate corporate entity (District Court Opinion at A20). Although Texpan owns the TEXACO KENYA,[1] the vessel is managed by Texaco Overseas Tankship Limited (TOT), a United Kingdom corporation with its principal place of business in London. TOT is engaged in international shipping. It is a wholly owned subsidiary of Texaco Limited, a United Kingdom corporation with its principal place of business in London. Texaco Limited, in turn, is wholly owned by Texas Operations (Europe) Ltd. (TOEL), a Delaware Corporation. Texaco, Inc., a Delaware corporation the stock of which is listed on the stock exchanges of the United States, England, Canada and Switzerland, owns all the stock of TOEL and Texpan.

Texaco's Board of Directors consists of fourteen (14) persons, none of whom serve on Texpan's Board of Directors. Texpan's Board of Directors consists of eight (8) persons, none of whom are Directors of Texaco. Texpan has its own separate management office in Panama City from which it conducts its business affairs and where it maintains its own accounting books and personnel records. The day-to-day administration of Texpan's affairs is managed by its President and Chief Executive Officer and his staff, all of whom are officed in Panama City, Republic of Panama. It maintains its own bank account

1. The nationality of the crew members on the TEXACO KENYA was as follows: All the unlicensed seamen were Panamanian nationals, while all the licensed and petty officers were Italian nationals.

in that city, pays its own obligations on checks prepared on its own accounting machines and is in all respects a viable, solvent corporation since its incorporation in 1938.

Following Reyes' death, suit was instituted in the Third Labor Court of Panama by Mrs. DeMateos and others. Texpan was a defendant in that action. Under Panamanian law, designated beneficiaries of a deceased seaman may recover from an employer for death caused by a "professional risk" to which the employee was exposed by reason of the work he performed for his employer. On August 16, 1972, the Panamanian Labor Court rendered judgment for plaintiffs. Texpan appealed that decision to the Superior Court of Panama, which affirmed the judgment on February 9, 1973. Texpan then appealed to the Supreme Court of Panama, which reversed the lower court on June 6, 1973, ruling that plaintiffs had failed to carry the burden of establishing that Reyes' death was caused by a "professional risk". The judgment of the Supreme Court of Panama in favor of Texpan stands as a final judgment in the courts of Panama.

On August 3, 1976, the United States District Court for the Eastern District of Pennsylvania dismissed the instant action on the ground of forum non conveniens. As previously stated, the trial court did not adjudicate the issue of whether or not the Panamanian decision should be given res judicata effect. An appeal was taken to the United States Court of Appeals for the Third Circuit pursuant to 28 U. S. C. 1291 and 28 U. S. C. 1292-3. On August 12, 1977, the decision of the United States District Court for the Eastern District of Pennsylvania was affirmed. The Third Circuit held that American law should not govern the relations between Texpan and its employees on vessels it uses in transportation of petroleum between Central American countries.

ARGUMENT.

The Decision of the Court of Appeals for the Third Circuit Is Not Such a Conflict With the Holdings of the Second Circuit as to Justify the Granting of a Writ of Certiorari.

There is no clearly-defined conflict between the circuits. The instant case is not in direct conflict with *Antypas v. Cia Maritima San Basilo, S.A.*, 541 F. 2d 307 (2nd Cir. 1976), cert. den. 97 S. Ct. 1116 (1977) or *Moncada v. Lemuria Shipping Corp.*, 491 F. 2d 470 (2nd Cir. 1974), cert. den. 417 U. S. 947. Although a footnote in the Opinion of the Court below (footnote 14 at A14 of Court of Appeals Opinion, Petitioner's Appendix) suggests that the decisions of the Second Circuit have held that stock ownership by an American corporation is enough to invoke application of the Jones Act, a careful reading of those decisions indicates that in each instance, the Court either found other sufficient American contacts or that American stock ownership was a substantial or significant consideration.

The due process clause of the fifth amendment places bounds upon congressional efforts to apply American rules of decision to transactions in which the United States has no sufficient interest. Consequently, the broad language of the Jones Act and the Death on the High Seas Act is not construed literally so as to apply to any seaman on any vessel of any nation at any location on the globe. The reach of these statutes is found in *Lauritzen v. Larsen*, 345 U. S. 571 (1953) and *Hellenic Lines Ltd. v. Rhoditis*, 398 U. S. 306 (1970). A brief analysis of these cases is indicated as Petitioner asserts that the instant case rejects this

Court's decision in *Rhoditis* and erroneously relies on *Lauritzen* as providing a basis for denying Jones Act jurisdiction to the plaintiff herein. Moreover, these decisions provide a background against which the holdings in *Moncada* and *Antypas* may be analyzed to determine whether there is any conflict with the Opinion of the Third Circuit.

In *Lauritzen* this Court considered the claim of a Danish seaman, temporarily resident in New York, who had signed articles in New York providing that rights of crew members of a ship of Danish registry would be governed by the law of Denmark. The seaman was injured in Cuban territorial waters. Notwithstanding two contacts with New York, temporary residence and place of contracting, the Court held that the Jones Act was inapplicable. The Court enumerated seven factors to be considered in determining which nation's law should be applied in a maritime tort claim:

1. The place of the wrongful act.
2. The law of the ship's flag.
3. The allegiance or domicile of the injured seaman.
4. The allegiance of the shipowner.
5. The place where the shipping articles were signed.
6. The inaccessability of a foreign forum.
7. The law of the forum.

This Court's decision in *Lauritzen* was an explicit recognition that due process requires a jurisdiction to have a substantial interest in the party whom it seeks to protect before extraterritorial application of its laws will be permitted. See *Henry v. Richardson-Merrell, Inc.*, 508 F. 2d 28, 39 n. 25 (3d Cir. 1974).

In *Rhoditis*, the Court introduced yet another factor in considering the Jones Act claim of a Greek seaman, who signed on in Greece, on a vessel of Greek registry owned by a Panamanian corporation, with an employment contract providing for adjudication of claims arising out of the employment relationship in Greek courts, for an injury in the Port of New Orleans. The vessel was managed by a Greek corporation almost entirely owned by an American domiciliary. Moreover, the managing corporation maintained offices in New York and New Orleans and the vessel derived its entire operating income from cargo originating or terminating in the United States. Justice Douglas, writing for the Court, said:

> ". . . The shipowner's *base of operations* is another factor of importance in determining whether the Jones Act is applicable; and there well may be others." 398 U. S. 309 (Emphasis in original).

Rhoditis "pierced the corporate veil" to apply the Jones Act to a vessel owner who was benefiting from the rights and privileges of American domicile while denying his employees the benefits of American law. *Rhoditis* did not hold, as Petitioner suggests, that once American parent ownership of a foreign corporation is shown, there is, *ipso facto*, Jones Act jurisdiction. Petitioner's strained reading of *Rhoditis*, that the "base of operations" factor must control absolutely the choice of law problem, is also the touchstone of his contention that *Moncada* and *Antypas* hold beneficial ownership of the shipowner corporation as such American contact as standing alone would warrant the application of the Jones Act. A careful reading of the

Second Circuit's decisions compels a different conclusion. These cases are not as expansive as Petitioner suggests on the question of the export of American maritime law to controversies having no real contacts with the United States and are not in conflict with the Third Circuit's holding.

In *Moncada*, plaintiff, the widow of a deceased seaman, brought an action under the Jones Act and general maritime law against the owner of the vessel, the chartering broker and the manager of the ship. Plaintiff's decedent had fallen ill and died while aboard ship at Maceio, Brazil. The cause of death was determined to be pulmonary congestion and decedent's widow alleged negligence by the master of the ship in failing to call a doctor rapidly. The corporation which owned the vessel was wholly owned by Americans and the chartering broker and the corporation which managed the ship had their base of operations in the United States. The managing and chartering of the vessel was conducted from the United States. All the officers of the defendant corporations were American and approximately forty (40) percent of the vessel's voyages began or ended in American ports. The district court held that the American contacts were insufficient to establish Jones Act jurisdiction and it dismissed the Jones Act claim. Proceeding to trial without a jury, to which plaintiff would have been entitled under the Jones Act, the judge found for defendants. The Second Circuit reversed as to the vessel owner only.

The Second Circuit determined that the facts before it evidenced substantial contact with the United States and directed the application of the Jones Act. The court relied principally on the fact that the stock of the foreign corporation was owned by Americans, but also noted that the vessel was managed and chartered from this country, that

all its officers were American and that the vessel frequently called on American ports, factors not present in the instant case. While it is clear that the court in *Moncada* applied the rule that Jones Act jurisdiction should be found if American contacts are "substantial", it is not clear on what basis this determination of substantiality was made. The language is ambiguous. It is this ambiguity which Petitioner exploits to support his "conflict between the Circuits" argument. The *Moncada* court appeared to rely on the Second Circuit's holding in *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437 (2d Cir.), cert. den. 359 U. S. 1000 (1959), in stating that:

> ". . . our task is not to weigh or balance present against absent contacts, but merely to determine whether the contacts which are present are substantial." 491 F. 2d at 472.

The trial court carefully analyzed this language in *Moncada* and commented that:

> "This language suggests that the court was determining the issue of substantiality in a vacuum; the factors which suggest foreign contacts are to be entirely ignored; the focus must be *only* upon those factors which evidence contacts with this country; if these factors are 'substantial', the Jones Act must be applied. Applying this test to the case at bar, the fact that the parties have already adjudicated this dispute in the courts of Panama would become irrelevant; our examination would be restricted to the question of whether the ownership of Texpan by Texaco, Inc., evidences a 'substantial' contact with the United States." (Emphasis in original). 417 F. Supp. at 418 n. 10; Appendix at A31.

There is other language in *Moncada*, however, which indicates that the court was not embracing this position.

> "Moreover, many of the factors here favoring defendants have been declared insignificant in *Lauritzen* and succeeding cases." 491 F. 2d at 472.

The trial court below then concluded:

> "It is apparent that in *noting the significance of the foreign contacts, the court did not restrict itself to an examination of the domestic contacts.* Thus, we do not believe that the *Moncada* decision stands for the proposition that we should totally ignore the contacts which suggest the application of another country's laws." (Emphasis in original) 417 F. Supp. at 419 n. 10; Appendix at A31.

The *Moncada* court apparently examined all the relevant factors in order to determine whether the United States contacts were substantial so as to justify Jones Act jurisdiction. This is in accord with the directive of the Supreme Court in *Rhoditis*. While great weight was given to the "base of operations" factor, there were other factors present in *Moncada* to tip the scales in favor of the application of American law. For example, the vessel was managed and chartered from this country and the vessel frequently called on American ports. These are factors not present in the instant case. At the least, then, *Moncada* and *DeMateos* are factually distinguishable. If *Moncada* did not examine all the relevant factors in order to determine substantiality, and applied the Jones Act upon a review of only the *Rhoditis* factor, then *Moncada* is an anomaly in

the law of the Second Circuit as no other case in that or any other circuit has adopted such a restricted basis for decision.

Antypas concerned an injury aboard the EURYBATES, owned by Cia. Maritima San Basilio, S.A., a Panamanian corporation and P. D. Marchessini & Co. The EURYBATES operated out of United States ports. Its earnings were collected in New York and the expenses of the vessel were paid from New York. All of the stock of the Panamanian shipowner was held by American citizens. Pursuant to an agreement between the two shipowners, an agent in the United States was to have full and complete responsibility for the booking and solicitation of cargo and passengers, the collection of freight and passenger revenues and the power to fix rates, allocate tonnage and space sailings. Advertisements inserted in shipping journals included a listing of agents in American cities.

In observing that at least some of the stockholders of the Panamanian corporation were Americans, the *Antypas* court commented that this contact, in and of itself, would be sufficient to support jurisdiction under the Jones Act. It is clear, however, that the court did not decide the issue solely on the basis of that contact. The court stated:

> "In addition, however, the record here shows that Marchessini Lines was operated by P. D. Marchessini & Co. from New York and that the EURYBATES was under its direct control. Moreover, the earnings from the vessel appear to be collected in New York and the expenses of the vessel paid from New York.
>
> These contacts are substantial and predominate over such factors as the ship's flag, the place of incorporation of the shipowner, and the seaman's nationality." 541 F. 2d at 310.

The court gave consideration to factors other than the nationality of the stockholders [2] and its decision reflects a finding of multiple contacts as a basis for Jones Act jurisdiction. The presence of these factors in *Antypas* also distinguishes it from *DeMateos,* which lacked sufficient contacts to warrant application of the Jones Act.

Neither *Moncada* or *Antypas* hold that beneficial ownership of the shipowner corporation, standing alone, is sufficient to invoke the reach of the Jones Act. Both cases contained contacts in addition to the beneficial ownership by Americans thereby warranting extraterritorial application of American law. Both are factually distinguishable from the instant case. The Third Circuit evaluation of *Moncada* and *Antypas,* contained in footnote 3 of the Opinion below, is perhaps overly broad. Furthermore, the Second Circuit's decision in *Fitzgerald v. Texaco, Inc.,* 521 F. 2d 448 (2d Cir. 1975), cert. den. 423 U. S. 1052 (1976), appears to be the most accurate reflection of the law in that Circuit. In *Fitzgerald,* the Second Circuit affirmed a forum non conveniens dismissal of plaintiff's collision action against Texpan, the same party present here. The Second Circuit did not find the ownership of Texpan's stock by Texaco, Inc., which has offices in New York, controlling on the issue of application of the Jones Act.

Furthermore, this issue is not of such significance as to warrant review by this Court. The jurisdictional reach of the Jones Act has been thoroughly examined in *Lauritzen*

2. There is some question whether the stockholders were actually residents or citizens of the United States. In his dissent, Judge Van Graafeiland noted that Maritima submitted an affidavit of its vice president to the trial court which stated that none of the directors or shareholders of Cia Maritima San Basilio S.A. was a resident or citizen of the United States. Judge Van Graafeiland stated: "In the face of this unequivocal statement and the District Court's finding in support thereof I find inexplicable the majority's statements that some or all of these stockholders are American citizens." 541 F. 2d at 310.

and *Rhoditis.* The Opinions of the courts below reflect careful application of the factors enumerated in *Lauritzen* and *Rhoditis* and the decision reached in the instant case is not in conflict with the principles enunciated in this case or with the holdings of the Second Circuit. Accordingly, there is no compelling reason for further review.

A Further Review of the Issues in This Case Is Unnecessary as the Courts of the Republic of Panama Have Already Rendered a Valid and Binding Judgment With Respect to the Parties Before This Court.

The issue whether Reyes' death had anything to do with his service on the TEXACO KENYA was thoroughly exhausted in the Courts of Panama. The highest court of that country, the Supreme Court of Justice of Panama, held that plaintiffs had failed to carry the burden of establishing that Reyes' death was caused by a "professional risk" to which the employee was exposed by reason of the work he performed for his employer. That judgment is a final judgment of a sovereign state having in personam jurisdiction of decedent's administratrix and Texpan, the parties before this Court.

A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned. *Restatement 2d, Conflicts,* § 98. Although judgments rendered in a foreign nation are not entitled to the protection of full faith and credit, in most respects such judgments, provided that they are valid under the rule of *Restatement 2d, Conflicts* § 92, will be accorded the same degree of recognition to which sister judgments are entitled. This is because the public interest requires that there be an end to litigation. *Baldwin v. Iowa State Traveling Men's Association,* 283 U. S. 522, 51 S. Ct. 517 (1931).

Plaintiff was represented at all levels of the judicial process in Panama. She had the opportunity to and did present evidence and examine witnesses. The Panamanian courts, applying Panamanian law to resolve a dispute between Panamanian citizens, rendered a final judgment binding upon the parties before them. There is no reason under law or policy why that controversy should now be dragged through American courts. It is respectfully contended that further review is unnecessary.

CONCLUSION.

Petitioner would have this Court extend the reach of the Jones Act to apply to controversies having no contact with the United States other than beneficial ownership of the shipowner corporation by Americans. This would expand extraterritorial jurisdiction of American law far beyond the contemplation of Congress or the decisions of this Court. Petitioner's creation of an artificial conflict between the Second and Third Circuits should be recognized for what it is, an effort to have this Court export American maritime law to essentially foreign controversies where the only real American contact is the involvement of an American lawyer. It is respectfully contended that this Court should decline such a role.

Respectfully submitted,

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